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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/379,651 08/24/99 KUZUYA

M 5000-4679

EXAMINER

PM82/0402

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NEW YORK NY 10154

GREEN, M

ART UNIT

PAPER NUMBER

3682

DATE MAILED:

04/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2-16-01.
- ☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

1. This action is in response to the amendment filed February 16, 2001; claims 1-13 are pending.
2. The substitute specification filed February 16, 2001 has been approved and entered.
3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on February 16, 2001 have been approved by the Examiner.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5, line 4, "a" should be changed to --said-- for proper antecedent basis.
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
7. Claims 1-10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto (see Figure 2) which discloses an axle housing assembly comprising an axle housing having a differential housing (23, 24, 30) with a body (30) and a pair of axle tubes (not numbered), support means (29) for supporting the axle housing to a base frame (28), a repulsive force receiving member (30a) on the body for coupling to the support means, wherein the

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differential housing includes a cover (23), wherein the support means includes a pair of axle brackets (29), a repulsive force receiving bolt (31), the axle brackets including a thick portion (29a), a nut (32) engaging with the bolt, the nut located in an upper portion of the differential housing (since no frame of reference has been established, any direction can be considered up).

8. Claims 1-10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Herzog which discloses an axle housing assembly comprising an axle housing having a differential housing (8) with a body (bottom half of 8) and a pair of axle tubes (25), support means (1, 23) for supporting the axle housing to a base frame (26), a repulsive force receiving member (12, see Figure 5) on the body for coupling to the support means, wherein the differential housing includes a cover (top half of 8), wherein the support means includes a pair of axle brackets (23), a repulsive force receiving bolt (see Figure 9), the axle brackets including a thick portion (12, see Figure 4), a nut (see Figure 9) engaging with the bolt, the nut located in an upper portion of the differential housing (since no frame of reference has been established, any direction can be considered up).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto in view of Pegg. Yamamoto discloses the axle housing assembly as previously discussed, but does

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not disclose a recess surrounding the through hole for recessing the head of the bolt. Pegg discloses a recess surrounding a through hole for recessing the head of a bolt (13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yamamoto by including a recess surrounding the through hole for recessing the head of the bolt in view of Pegg for the purpose of preventing anything from catching on the bolt head.

11. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herzog in view of Pegg. Herzog discloses the axle housing assembly as previously discussed, but does not disclose a recess surrounding the through hole for recessing the head of the bolt. Pegg discloses a recess surrounding a through hole for recessing the head of a bolt (13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herzog by including a recess surrounding the through hole for recessing the head of the bolt in view of Pegg for the purpose of preventing anything from catching on the bolt head.

12. Applicant's arguments filed February 16, 2001 have been fully considered but they are not persuasive.

13. Applicant argues that in Yamamoto, reference number 30 is the cover, not the body, and reference number 23 is the body, not the cover. However, applicant's arguments are more limiting than the claims. There is nothing which precludes element 30 of Yamamoto being called a "body" and nothing which precludes element 23 of Yamamoto being called a "cover". Any object can be referred to as a body, and any object which "covers" something can be referred to as a cover.

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14. Applicant argues that in Herzog, beam 1 is not mounted to the base frame. However, the claims do not positively recite the base frame, the claims recite the base frame in intended use only--"for mounting to a base frame". A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Additionally, there is nothing which precludes a brake casing from being referred to as a "base frame".

15. In response to Applicant's argument that the Herzog does not have the effect wherein "the axle housing can be supported by easily combining it with the base frame without strict dimensional accuracy", this argument is moot since this limitation is not found in the claims.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is (703) 305-7687. Recognizing that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitted by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

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I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. 703 305-7687) on _____

(Date)

Typed or printed name of person signing this certificate:

(Name)

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.2). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

18. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Mimi Green at (703) 305-6306.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, David Bucci, can be reached at (703) 308-3668. The fax number for this Group is (703) 305-7687.


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703) 308-2168.

MG
March 29, 2001


MARY ANN GREEN
PRIMARY EXAMINER
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